

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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APR 16 1999

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Implementation of the Subscriber Carrier	)	
Selection Changes Provisions of the	)	
Telecommunications Act of 1996	)	CC Docket No. 94-129
	)	
Policies and Rules Concerning	)	
Unauthorized Changes of Consumers'	)	
Long Distance Carriers	)	

**OPPOSITION OF U S WEST COMMUNICATIONS, INC. TO JOINT  
PETITION FOR WAIVER**

U S WEST Communications, Inc. ("U S WEST") opposes the "Joint Petition for Waiver" ("Petition" or "Waiver Petition"), recently publicly noticed for comment,<sup>1</sup> filed in the above-captioned proceeding.<sup>2</sup> In that Waiver Petition, Joint Petitioners

<sup>1</sup> See Public Notice, "Common Carrier Bureau Announces Deadline for Filing Comments on MCI WorldCom's Joint Petition for Waiver of Slamming Liability Rules and Third Party Administrator Proposal, CC Docket No. 94-129, DA 99-683, rel. Apr. 8, 1999.

<sup>2</sup> The filing was made by MCI WorldCom, Inc., AT&T Corp. ("AT&T"), the Competitive Telecommunications Association, Sprint Corporation, the Telecommunications Resellers Association, Excel Telecommunications, Inc., Frontier Corporation, and Qwest Communications Corporation ("Joint Petitioners"), on March 30, 1999. That same day, Joint Petitioners filed a "Joint Motion for Extension of Effective Date of Rules Or, in the Alternative, for a Stay" ("Motion" or "Extension Motion").

The Extension Motion is intrinsically associated with the Waiver Petition. That is, Joint Petitioners seek to have the Federal Communications Commission ("FCC" or "Commission") approve their plan for a Third Party Administrator ("TPA"), concomitantly granting a waiver of the applicability of certain of the FCC rules (specifically rules 64.1100(c) and (d), 64.1170 and 64.1180, sometimes referred to as the "liability rules"; see In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, Second Report and Order and Further Notice of Proposed Rulemaking, CC

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seek a waiver of certain of the Commission's rules adopted in the Second Report and Order,<sup>3</sup> specifically those dealing with liability and dispute resolution. In support of their Waiver Petition, Joint Petitioners argue that they are interested in pursuing the establishment of a TPA to handle slamming complaints, investigations of disputes, and the transfer of money among carriers and customers.

U S WEST opposes the establishment of a TPA along the lines crafted by Joint Petitioners. As a general matter, U S WEST believes the TPA proposal outlined by the Joint Petitioners at the same time overstates consumer benefits and potentially understates industry costs. The proposal seeks to frustrate predictable customer behavior and fails totally to articulate even potential levels of incurred costs against which a solid cost recovery methodology might be compared.

Moreover, the proposal is inappropriately skewed to an interexchange carrier ("IXC") perspective, and clearly reflects the absence of local exchange carrier

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Docket No. 94-129, 14 Comm. Reg. (P&F) 799, 877-78 (App. A) (1998) ("Second Report and Order"). Because the TPA proposed by the Joint Petitioners cannot be implemented, however, by the current May 17, 1999 effective date for the referenced rules, Joint Petitioners seek to have the effective date extended as to them while they work through the implementation of the TPA.

As made clear in this filing, U S WEST believes Joint Petitioners overstate the viability and public interest components of their particular TPA proposal. Thus, we do not support an extension of time being granted as to that proposal. However, an extension of time regarding the effective date of the rules generally would not be inappropriate. *To the extent carriers dedicate resources and expend funds to "implement" the FCC rules without regard to a TPA entity, the less likely it is that individual carriers will want to duplicate those resources or expenditures to implement any TPA proposal in the future.* For this reason, U S WEST believes an extension of time regarding the effective date of the liability rules could well be in the public interest without respect to the specifics of the TPA proposal proffered by the Joint Petitioners.

<sup>3</sup> See Second Report and Order, 14 Comm. Reg. (P&F) 799.

(“LEC”) participation in the design of the TPA process. While U S WEST appreciates that any call to the “industry” to formulate policy or practices<sup>4</sup> must begin somewhere, the failure to include LECs in the original development of the proposal renders it overly complicated and excessively costly.

For example, the TPA proposed by Joint Petitioners involves the TPA in the customer contact process as well as in the dispute resolution and transfer of money aspects of ultimately resolving the slamming complaint. The insinuation of the TPA into the customer contact transaction is unnecessary and will inevitably lead to duplicate processes and costs for LECs, particularly those billing telecommunications charges for other carriers.

With respect to customer contacts, the TPA process proposed by the Joint Petitioners does not demonstrate how current predictable customer behavior will be successfully changed, what the cost will be to change it, and what the benefits overall are even if the change is affected. Today, customers who have been slammed by carriers utilizing LEC billing and collection services quite routinely call the LEC to seek relief.<sup>5</sup> This contact has little to do with the LEC being in a

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<sup>4</sup> Compare Second Report and Order, 14 Comm. Reg. (P&F) at 819 ¶ 55.

<sup>5</sup> While it is true that carrier “bill pages” in LEC bills provide information on how a customer can contact a carrier directly, those contacts are most successfully facilitated when the customer has an ongoing relationship with the service-providing carrier and the customer can reasonably anticipate a commercially-reasonable response from that carrier. Unlike that type of carrier referral, it is not uncommon that customers do not wish to deal with a carrier they believe took some fraudulent action with respect to their account, *i.e.*, slammed them. Rather, in this situation, they want to talk to the company who sent them the bill on behalf of the fraudulent actor. Furthermore, from the customer’s perspective, the existence of an independent relationship between the customer and the LEC suggests that the

competitive position *vis-à-vis* the service providing carrier and everything to do with the LEC being the billing entity.<sup>6</sup>

The TPA proposal submitted by the Joint Petitioners seeks to change this customer behavior, piggy-backing on the Commission's suggestion that a "single point" of contact (presumably to a TPA) might be nice for customers.<sup>7</sup> U S WEST disputes the feasibility (particularly at the beginning of implementing the FCC's rules) of forcing customers to call a TPA to address the "up front" aspects of a communication involving a slamming dispute (e.g., the change back to the right carrier, the communication around the absolution "right" and any appropriate billing adjustments).<sup>8</sup> We believe the process currently utilized by us more than

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customer will have a more "friendly ear" if the contact is made with the LEC than if the customer calls the carrier with whom -- according to the customer -- it has no relationship.

<sup>6</sup> Compare customer conduct within the context of credit card billings, where customer inquiries are made to the card provider rather than the merchant, in the first instance.

<sup>7</sup> Second Report and Order, 14 Comm. Reg. (P&F) at 819 ¶ 55.

<sup>8</sup> Part of the practical difficulty in implementing the Commission's rules is that they rely (perhaps unwittingly) on customer contacts for essential information. For example, currently LECs send certain information to carriers in slamming situations. However that information stream does not identify to the carriers the identity of each affected carrier. That is, the alleged slamming carrier will get notification that "Account xxx" has left the carrier due to a slamming complaint; the "original" authorized carrier will get notice that "Account xxx" has returned to the carrier within the context of a slamming complaint. This information, however, does not allow either carrier to contact the other.

In order to avoid the ongoing reliance on a customer contact to the non-LEC carrier, some type of electronic information feed is going to have to be developed. Once that capability is created, the information could be fed to the affected carriers and/or a TPA. But creating the TPA, in and of itself, does not solve the "carrier identification" problem. Absent electronic communications that include the information, the TPA will either have to try to capture and compare account

accommodates customers in an exceedingly customer-friendly manner.<sup>9</sup>

We see no good reason to “fund” a TPA to duplicate<sup>10</sup> (or take over) the process. Indeed, we oppose any TPA proposal that would seek to shut down a line of communication that a customer desired to pursue with us and potentially created tension or an adversary aspect to our relationship with that customer. Given that the customer contact function can clearly be separated from the money administration processes associated with a TPA, U S WEST -- at least at this time -

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information or will need to make some type of customer contact in order to secure the necessary carrier identification information. Once an electronic capability to provide the information is developed, it is unclear that a TPA would be necessary to process the information and that the identifying information would not allow communication between the two affected carriers directly.

<sup>9</sup> U S WEST currently operates a commercially reasonable and customer friendly response process associated with billing complaints, be they associated with slamming allegations or other assertions. If the customer has not paid, a billing adjustment is made for the disputed amount, and the customer is advised to contact the service provider who remains free to pursue collection of the amounts. If the customer has paid, a credit is made, with the same “contact your service provider” message being conveyed. In addition to this billing adjustment practice, in slamming complaint cases, U S WEST also switches the customer back to their preferred carrier immediately, charging the putative slamming carrier for the original “unauthorized” change and the change back charge.

While carriers affected by slamming allegations could as easily refer customers to their LECs for these billing adjustments and change backs, as send the customers to a TPA, the Joint Petitioners’ proposal clearly rejects endorsing the *status quo* and seeks to prohibit the current LEC processes once a TPA is established. See Waiver Petition at 21. While U S WEST is always agreeable to assessing the propriety of its practices as new practices are developed, to ensure a continuing customer-friendly marketplace, the TPA suggestion seems contrary to the public interest upon initial analysis.

<sup>10</sup> We believe considerable duplication would occur in that a customer would call a LEC and then be advised he/she had to call another number (the TPA). Moreover, our past experience suggests many customers will simply refuse to make the second call. In such situation, U S WEST is unwilling to “refuse to deal” with our own customers.

- does not believe it could support a TPA model that failed to separate that function from the dispute resolution and money transfer processes.

But something in the nature of a liability administration process different from the Commission's proposal is clearly necessary. It seems obvious that the authorized carrier – that carrier currently charged under the FCC's rules as being the judge and jury regarding whether a slam did occur and whether certain billings are "righteous" – should not be put in the position of irritating its former (and now returned) customer by holding against the customer regarding a slamming allegation and rebilling (or arranging for the rebilling of) the putatively "slamming carrier's" charges. That "function" might be more safely performed by a TPA who can be the point of contact to deal with any (predictable) customer irritation.<sup>11</sup>

So too might the re-rating or recharging of billed amounts associated with charges that extend beyond the 30-day absolution period. A decision that an individual should be rebilled and the amount of rebilling made by an entity other than the allegedly slamming carrier (who the customer is angry at) and the authorized carrier (who wants to maintain a solid ongoing relationship with the

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<sup>11</sup> Again, U S WEST's current comments should not be read to suggest that the propriety of a TPA has already been established. That is not necessarily the case. For example, right now U S WEST offers a tariffed service in which a carrier can request U S WEST to undertake a slamming investigation in conjunction with a customer "change back" (to the original carrier). (The tariff currently has this investigation being undertaken at the behest of the alleged slamming carrier, rather than the authorized carrier as the Commission's rules would propose.) To the best of U S WEST's knowledge, carriers purchasing this service have not claimed that U S WEST acts in an "unneutral" manner when conducting such investigation. Thus, it is not a given that a TPA is necessary to perform this function.

customer) has some logic behind it.

With respect to cost identification, the filed TPA proposal is silent. Despite that silence, however, there are proposed cost recovery methodologies (i.e., annual revenue assessments<sup>12</sup> and “per-complaint-investigation” charges).<sup>13</sup> Without a serious delineation of the costs involved, it is impossible to determine whether the cost recovery mechanisms are adequate or appropriate. However, a review of the filed proposal suggests that the filed TPA proposal could involve burdening the entire telecommunications industry with costs in an attempt to “fix” Commission rules associated with the exchange of monies between private businesses. To the extent such a “fix” is necessary – and it certainly is<sup>14</sup> -- it should be accomplished with the least cost to “innocent bystanders” as possible. The proffered TPA proposal does not appear designed to accomplish this result. At the same time, Joint Petitioners seek – through the filing of the TPA proposal – to “remedy” other complaints they have about the costs of services, without going through the appropriate procedural devices to prosecute their cases.<sup>15</sup>

In closing, it is U S WEST’s understanding that only recently have the LECs

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<sup>12</sup> Joint Petition at 27.

<sup>13</sup> Id. (a processing fee not to exceed \$50.00).

<sup>14</sup> AT&T, and others, have already outlined the extent to which the Commission’s rules are simply impossible to implement from a commercially reasonable perspective, imposing obligations on carriers who have none under the statute and depriving those in the statutory protected class from the benefit of the remedy outlined by Congress. See, e.g., AT&T’s Comments on the December 23, 1998 Further Notice of Proposed Rulemaking, filed herein, at 1-15.

<sup>15</sup> See Joint Petition at 20 and n.29 (attempting through the TPA filing to challenge the LECs’ PIC change charges).

been in a position to begin to digest the TPA proposals proffered by the IXC's. We understand that ongoing discussions have begun and future meetings scheduled that will allow for continued definition of a possible TPA model. We will be participating in those meetings in hopes of crafting a TPA model -- should such model prove to be in the best interests of industry, customers, and the public -- that is practical and cost-effective. Until those decisions are made -- on a total industry, rather than an industry segment basis -- the Commission should not endorse a particular TPA model.

Respectfully submitted,

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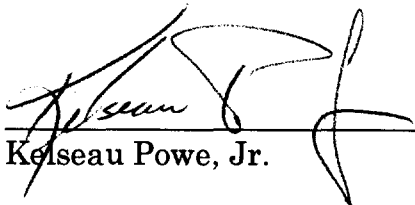
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April 16, 1999



## CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that on this 16<sup>th</sup> day of April, 1999, I have caused a copy of the foregoing **OPPOSITION OF U S WEST COMMUNICATIONS, INC. TO JOINT PETITION FOR WAIVER** to be served, via first class United States Mail, postage pre-paid, upon the persons listed on the attached service list.



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